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**Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Fishermen's Boat Shop, Inc.

**File:** B-276529

**Date:** June 17, 1997

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John T. Jozwick, Esq., for the protester.

Richard V. Gonzales, Esq., United States Coast Guard, for the agency.

Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Agency's application of a "foreseeable cost" evaluation provision to the protester's otherwise low bid for drydocking and repair of a Coast Guard cutter was improper, where the provision did not apply if a bidder's shipyard was less than 50 miles from the cutter's home moorage, as was the protester's shipyard.

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### **DECISION**

Fishermen's Boat Shop, Inc. protests the award of a contract to Maritime Contractors, Inc. (MCI) under invitation for bids (IFB) No. DTCG85-97-B-625L68, issued by the Department of Transportation, United States Coast Guard, for drydocking and repair of the U.S. Coast Guard Cutter PT. BENNETT. The protester contends that the Coast Guard erred in applying certain price-related factors to its bid, leading the agency to incorrectly conclude that the overall cost of its bid was higher than MCI's.

We sustain the protest.

The PT. BENNETT's home moorage is at Port Townsend, Washington, located on the western shore of the Puget Sound Waterway. The IFB contemplated performance at the contractor's shipyard and restricted competition to bidders with shipyards on the Puget Sound Waterway. The period of performance was from April 14 through May 23, 1997.

The IFB, as amended, informed bidders that the crew of the PT. BENNETT would not live aboard the cutter, but would report to the cutter during contract performance. Crew members were to oversee the progress of certain work requirements, either by witnessing, testing or inspecting the work. The IFB stated:

"[c]rew's normal working hours are from 7:30 AM to 4 PM Monday through Friday, except Federal Holidays. If the contractor desires to

accomplish work, particularly work which requires inspection or fire watches, outside of normal working hours, request shall be made to [the contracting officer's technical representative] at least 24 hours in advance."

The IFB provided for the evaluation of bids on the basis of price and price-related factors, identified in section M of the IFB as certain foreseeable costs to the agency "that will vary with the location of the commercial shipyard to be used by offerors of services under this solicitation." The foreseeable cost factor accounted for such things as relocating the cutter and transporting various Coast Guard personnel to the contractor's shipyard. As relevant here, the IFB provided for an assessment of the foreseeable costs of messing and berthing 11 PT. BENNETT crew members during the 40-day performance period. However, this foreseeable cost was only to be applied if the location of contract performance was more than "50 geographical road miles" from the cutter's home moorage of Port Townsend. The IFB stated that the "50 geographical road miles" would be determined "[i]n accordance with Rand McNally Road Atlas."

The agency received two bids by the March 4, 1997, bid opening. MCI submitted the apparent low bid of \$83,177 and Fishermen's the next low bid of \$89,826. For the foreseeable cost evaluation, the contracting officer initially found, using Rand McNally Road Atlas software, that Port Townsend was 78 miles from MCI's Bellingham, Washington shipyard and 44 miles from Fishermen's Everett, Washington shipyard. Everett and Bellingham are on Puget Sound's eastern shore, opposite Port Townsend. The calculated mileage between these cities was based upon the use of state-operated ferries departing from Port Townsend to cross Puget Sound, which represents the most direct route.

In determining whether the foreseeable costs of messing and berthing applied to the Fishermen's bid, the contracting officer mistakenly used a figure representing the round-trip mileage between Port Townsend and Everett, 89 miles. Since this figure exceeded the 50-mile ceiling stated in the RFP, the contracting officer added \$38,680 in messing and berthing costs to the Fishermen's bid; this amount, plus other foreseeable costs, yielded a total evaluated bid price of \$150,470.12. MCI's evaluated bid price was \$143,993.20, which included \$39,600 in messing and berthing costs. On March 7, MCI received award.

Upon receiving notice of award on March 13, the protester asked the contracting officer why MCI's evaluated bid price was lower than the Fishermen's bid, since Fishermen's shipyard was within 50 miles of Port Townsend and exempt from the application of the foreseeable costs of messing and berthing, while MCI's shipyard was undeniably more than 50 miles from Port Townsend. The contracting officer then recognized her error in evaluating the Fishermen's bid and reevaluated each bidder's foreseeable costs.

During the reevaluation, the contracting officer became acquainted with the state-operated ferry schedule and realized that the PT. BENNETT crew would not reach the protester's Everett shipyard before 9:00 a.m. using the ferry. Because the crew's normal reporting time was 7:30 a.m., the contracting officer decided that, "although Fisherman was less than 50 miles from the home moorage . . . the use of the ferry as a method of transportation would not be acceptable for the performance of this contract."

As a result, the contracting officer recalculated the mileage between Port Townsend and each bidder's shipyard, using an overland route which traversed Puget Sound's circumference. To generate the mileage around the circumference, the Rand McNally Road Atlas software combined the mileage from two legs of the trip: from Port Townsend to Tacoma, Washington, and then from Tacoma to Everett or Bellingham. Based upon this route, Port Townsend was 134 miles from Everett and 194 miles from Bellingham, and the contracting officer applied the foreseeable costs of messing and berthing to both bids. As recalculated, the Fishermen's total evaluated bid price was \$139,832.08, including \$29,160 in foreseeable messing and berthing costs, and MCI's total evaluated bid price was \$135,828.38, including \$30,640 in foreseeable messing and berthing costs. The contracting officer thus affirmed the award to MCI.

Fishermen's protests that the foreseeable costs of messing and berthing were not applicable to its bid under the terms of the solicitation. Fishermen's maintains that the IFB required the Coast Guard to determine mileage "[i]n accordance with Rand McNally Road Atlas," which uses the state-operated ferry system to achieve the most direct route between cities on opposite shores of Puget Sound. As a result, the agency could not, according to the protester, determine mileage by using a "forced route" around the circumference of Puget Sound.

An agency may not evaluate bids on the basis of price-related factors which are not identified in the solicitation. Respiratory & Convalescent Specialties Inc., B-255176, Feb. 14, 1994, 94-1 CPD ¶ 101 at 3.

Here, the record confirms, and the Coast Guard does not dispute, that the Rand McNally Road Atlas<sup>1</sup> uses the state-operated ferry system to achieve the most direct route between points on opposite shores of Puget Sound, and that Fishermen's shipyard is less than 50 miles from Port Townsend using this route. Because the IFB evaluation scheme incorporated the Rand McNally methodology for determining mileage, the Coast Guard should have excluded the foreseeable costs of messing and berthing from the Fishermen's bid.

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<sup>1</sup>We reviewed the 1996 Rand McNally Road Atlas, the Rand McNally Standard Highway Mileage Guide, and computer-generated Rand McNally Road Atlas software printouts.

The Coast Guard nevertheless contends that the use of the state-operated ferry would not allow the PT. BENNETT's crew to arrive at the protester's shipyard by 7:30 a.m., contrary to the IFB requirements that the "[c]rew's normal working hours are from 7:30 AM to 4 PM" and that the contractor must obtain approval "to accomplish work . . . outside of normal working hours."<sup>2</sup> Interpreting this provision, the agency argues that the contractor must begin work by 7:30 a.m. in the crew's presence because "[u]nder no circumstances will the Coast Guard allow contractor personnel aboard a Coast Guard Cutter of this class without members of the Coast Guard present." The agency thus argues that bidders should have known that the Coast Guard would station the crew at the performance location and incur messing and berthing costs, if the crew could not accomplish the ferry commute by 7:30 a.m.<sup>3</sup>

While the Coast Guard, during its bid evaluation, may have anticipated a need for its crew to reside at the performance location rather than commute by ferry, the IFB did not reasonably express this intent nor authorize the application of foreseeable messing and berthing costs under such circumstances. Geographical distance, not commuting time, was the exclusive basis stated in section M of the IFB for determining the applicability of foreseeable messing and berthing costs, and the IFB limitation on working hours did not alter this stated evaluation basis. Assuming, arguendo, that the working hours provision required the contractor to begin work each day by 7:30 a.m.--which it did not--the contractor could fulfill this obligation whether the PT. BENNETT's crew was present or not. Contrary to the agency's allegations, nothing in the solicitation required the crew to witness all, or even most, aspects of the contract work, and the contractor could satisfy its

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<sup>2</sup>The agency claims that the Fishermen's bid was nonresponsive to the working hours requirement. Fishermen's bid took no exception to the requirement and was thus responsive. To be responsive, a bid must be an unequivocal offer to perform without exception the exact thing called for in the solicitation so that acceptance of the bid will bind the contractor to perform in accordance with all the IFB's material terms and conditions. Southwest Marine, Inc., B-247639, May 12, 1992, 92-1 CPD ¶ 442 at 3.

<sup>3</sup>The Coast Guard also argues that Fishermen's knew through prior procurements that the ferry route from Port Townsend to Everett was unacceptable. Fishermen's denies, and the record does not support, this charge. First, the Coast Guard relies upon prior solicitations that differ in relevant part from the one at hand, since they either do not incorporate the Rand McNally methodology for computing mileage in the Puget Sound region or involve a home moorage on the same shore of Puget Sound as the protester's shipyard. Second, the contracting officer in this case used the ferry route in her initial rendering of foreseeable costs; while the agency implies that the contracting officer's use of the ferry route was unintentional, we note that the bid evaluation worksheets account for the costs of ferry passage.

performance obligations by scheduling inspections and tests to correspond with the crew's arrival. In short, the working hours provision did not make performance contingent upon the crew's arrival by 7:30 a.m. and did not alter the stated evaluation basis.

Therefore, as written, the evaluation scheme did not permit the Coast Guard to apply the costs of messing and berthing to the Fishermen's bid. Had the Coast Guard properly evaluated the Fishermen's bid, the protester's total evaluated bid price would have been lower than the awardee's, and it should have received award under the IFB.

While we sustain the protest on this basis, we are unable to recommend that the award be disturbed because MCI has completed performance. However, we recommend that the protester be reimbursed its bid preparation costs and its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d) (1997). The protester should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General  
of the United States